

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:08cv554

DANNY MITCHELL,

Plaintiff,

vs.

**BIG LOTS STORES, INC. and
TREND SETTING DESIGNS, INC.,**

Defendants.

J U D G M E N T

THIS MATTER came on for trial in the March 8 Mixed Jury Term of this Court and was heard by the undersigned judge with a jury duly empaneled and the jury has answered the issues submitted as follows:

1. Did the Defendant Trend Setting Designs, Inc. place the foot stool into the stream of commerce with a defect that was the legal cause of damage to the Plaintiff Danny Mitchell?

ANSWER: YES

2. Did the Defendant Trend Setting Designs, Inc. breach the implied warranty of merchantability made to the Plaintiff Danny Mitchell?

ANSWER: NO

3. What amount of damages, if any, is the Plaintiff Danny Mitchell entitled to recover from the Defendant Trend Setting Designs, Inc. for the conduct that you found occurred in either Issue No. 1 and/or Issue No. 2?

ANSWER: \$45,556.17

4. Was there negligence on the part of the Plaintiff Danny Mitchell which was a legal cause of his damages?

ANSWER: NO

- a. Did such negligence consist of something other than a failure to discover the defect in the product or to guard against the possibility of its existence?

ANSWER: not applicable

5. State the percentage of any responsibility for the Plaintiff Danny Mitchell's damages that you charge to the Defendant Trend Setting Designs, Inc. and to the Plaintiff Danny Mitchell.

Defendant ANSWER: not applicable

Plaintiff ANSWER: not applicable

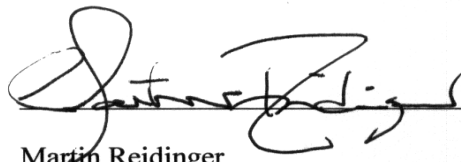
Based thereon the Court concludes as a matter of law that the Plaintiff is entitled to a Judgment against Defendant Trend Setter Designs, Inc. in the amount of the damages found by the jury, \$45,556.17. It is undisputed, however, that the Plaintiff entered into a prior settlement with

and release of the Defendant Big Lots Stores, Inc. in exchange for consideration in the amount of \$16,500.00. Defendant has moved for a reduction of the amount of this judgment by the amount of such prior payment. Contemporaneously herewith the Court enters an order granting the Defendant's motion for the reasons stated therein. Based thereon the Court concludes as a matter of law that the amount of damages found by the jury, \$45,556.17 should be reduced to the amount of \$29,056.17 for the entry of this Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have and recover of the Defendant Trend Setting Designs, Inc. the sum of \$29,056.17 with interest from the date of the filing of the Complaint herein, and the Plaintiff shall recover his costs of the action from the Defendant Trend Setting Designs, Inc.

IT IS SO ORDERED.

Signed: May 3, 2010


Martin Reidinger
United States District Judge

